

## **DEPARTMENT OF REAL ESTATE FORUM**

Santa Clara Convention Center

October 8, 2004

### **MEETING REVIEW**

**DRE STAFF IN ATTENDANCE:** Commissioner Jeff Davi, John Liberator, Larry Alamao, Bill Moran, Fa-Chi Lin, Chris Neri, Barbara Bigby, Lisa Stratton.

**OPENING REMARKS:** John Liberator opened the meeting at 1:05 p.m by introducing DRE staff in attendance, followed by the introduction of Jeff Davi, who was appointed Real Estate Commissioner on October 6 by Governor Schwarzenegger.

Commissioner Davi briefly summarized his background, what he foresees for the DRE in the future, the key issues he plans to address while in office, and the current condition of the DRE. He expressed appreciation to the CAR Leadership and staff, and the Realtor members for their support of his candidacy.

### **OPERATIONS REPORT – JOHN LIBERATOR**

Liberator began his Operations Report by providing an overview of the Department's fiscal condition, summarizing revenue, net expenditures and reserves for fiscal year 2003/2004 as compared to fiscal year 2002/2003:

Revenue was down 7 percent, primarily due to the fee reduction which went into effect August 2003.

Expenditures were up 15 percent due to the hiring of temporary help and overtime, which continues to be needed to address the department's increased workload. The rise in expenditures also reflects an increase in credit card service fees, which the DRE pays for those license transactions paid for by credit card.

Reserves were up 33 percent.

As to Licensing, comparing the same time period for the last two fiscal years (July 1 through June 30):

Salesperson Exams - up 33 percent.

Broker Exams - up 47 percent.

Original salesperson licenses issued – up 11 percent.

Original broker licenses issued – up 18 percent.

Renewals:

83 percent of the sales licenses and 88 percent of the broker licenses up for renewal were renewed.

As to licensee population, as of the end of the 03/04 fiscal year (July 31), that number stood at 393,750. As of October 1, it had already risen to 406,486. Very strong numbers which reflect the continued interest in real estate licensure.

As to workload, Liberator advised that staff continues to make headway in reducing processing times. In January 2004, license processing times stood at approximately 175 days. That number is now down to 79 days with continued efforts to reduce times even further. Increased use of the eLicensing and eExams systems by licensees and license applicants has helped to lessen the paper flow into the department, allowing more staff time to be directed to processing the paper received. The Department also continues to schedule “mega exams,” where up to 2000+ applicants a day are tested at one location. Additionally, the use of multiple test sites at each of the DRE’s five office locations has helped keep the examinee pool moving. The ability to do online original exam scheduling via the eExam system is expected to be available in January 2005, which should further speed up processing times. As a reminder, Liberator advised that delays in processing due to an applicant’s fingerprints being rejected or delayed by the DOJ and/or the FBI, are not under the DRE’s control.

Liberator acknowledged David Howe, Regional MLS Coordinator for Sacramento and 5 surrounding counties. Mr. Howe contacted the Department and offered to place a DRE eLicensing promotional ad on their Metrolist, which ad could potentially be viewed by the approximately 17,000 system subscribers. DRE is very grateful to Mr. Howe for that exposure. Liberator stated that if other local associations have an interest in helping the Department promote its online systems, they should contact him.

As to Subdivisions, applications for Public Reports are up 16 percent, which reflects a very favorable real estate market.

Lastly, Liberator announced that Governor Schwarzenegger recently signed legislation which amended the “poison pill” restrictions on the DRE’s reserves. The legislation raised the statutory cap on reserves from 6 months to eighteen months, and included a prohibition against future “loans” of the Department’s Special Fund reserves to the State’s General Fund. This will help provide fiscal stability, and allow the department to pursue multi-year IT projects, which usually require large capital expenditures. Two such projects are electronic exams and an updated or new IVR system. Liberator thanked CAR for the assistance and support they provided in pursuing this legislation.

#### **ENFORCEMENT CASES – BILL MORAN**

Moran discussed three recent enforcement cases which involved fraud, dishonest dealing, misrepresentation, and failure to disclose. Each of the cases resulted in license revocation for the licensees involved.

#### **TRUST FUND HANDLING – FA-CHI LIN**

Mr. Lin set forth the five most cited violations discovered during property management audits: 5<sup>th</sup> – Interest Bearing Trust Account Violations – Remember that there should be a separate account for each beneficiary. Additionally, the law prohibits a broker from benefiting from the interest earned on such an account. This violation showed up in approximately 5% of the audits conducted.

4<sup>th</sup> – Commingling Violations. Broker's funds cannot be combined with the funds of a client. Regulation 2835 permits commingling in certain situations, but funds must be separated within 25 days of being deposited into the trust account. This violation showed up in 9% of the audit cases reviewed.

3<sup>rd</sup> – Violations due to Trust Account Withdrawals. Mainly due to unlicensed signatories making withdrawals. Only the broker of record or a licensee who is an employee of the broker, or an employee who is unlicensed but bonded, are authorized to make withdrawals. 21% of audits show this type of violation.

2<sup>nd</sup> – Trust Account Recordkeeping and Reconciliation Violations. Two types of records need to be maintained - Columnar Record of All Trust Funds Received and Paid Out of the Trust Fund Bank Account and Separate Record for each Transaction or Beneficiary. Going hand in hand is the reconciliation. The balance of all separate beneficiary or transaction records must be reconciled with the record of all Trust Funds received and disbursed at least once a month.

#1 most cited violation – Trust Fund Shortages. Lin cited the details of one particular audit as an example of this type of violation.

Mr. Lin reported that statistics for the past three years show that trust fund shortages were found in roughly 36 percent of property management audits. Over the past year, shortages of between \$5 and \$317,000 were found. The number one cause of shortages is consistently found to be due to negative beneficiary balances; that is, using one person's money to pay another person's debt.

Mr. Lin offered the following tips to avoid trust fund shortages: Have adequate separation of duties – the person who touches the money shouldn't touch the books; be actively involved in and understand the accounting functions; establish written policies and procedures of supervision and practice them; do not allow negative balances; and be tough on the issue of NSF – one of the top reasons for shortages.

More detailed information on proper trust fund recordkeeping can be found in the DRE publication, Trust Funds, which can be downloaded from the Publications link on the DRE website ([www.dre.ca.gov](http://www.dre.ca.gov)).

## **SALE OF SUBDIVIDED LANDS – CHRIS NERI**

The Department of Real Estate is legally mandated, via the Subdivided Lands Law, to regulate subdivision offerings consisting of 5 or more lots, units or parcels for sale, lease or financing. The vehicle by which the Department oversees this regulation is through the Public Report. Neri discussed the various types of public reports available to developers, the information contained in the reports, the protections they offer to consumers, and the requirements associated with offering subdivided lands for sale.

## **HELPFUL LICENSING HINTS – BARBARA BIGBY**

Ms. Bigby shared some tips on how to avoid submitting a deficient license application to the DRE, which will help improve processing times for all licensees. For every deficient application that is received, a staff person must handle it at least twice. During the past fiscal year, for original license applications and renewal applications alone, 39 percent were determined to be deficient. That means approximately 45,000 applications, not counting change applications which were deficient, had to be touched twice, taking staff time away from processing other applications, which causes delays for licensees and applicants.

Ms. Bigby offered the following helpful tips:

- 1) Submit the correct application. If you're a broker, submit a broker application, not a salesperson application, and vice versa.
- 2) Fill out the application completely and accurately. When in doubt, fill it out!
- 3) Submit the correct fees. Submitting too little requires staff to write you a letter. Submitting too much requires staff to process a refund. Each refund takes approximately 45 minutes to process. Last fiscal year, 15,000 refunds were processed. That is equivalent to 6 additional staff persons who could be working on other licensing documents.
- 4) Get all required authorized signatures. Only designated officers can sign on behalf of the corporation, and employing brokers must sign all salesperson documents. Missing signatures is one of the major causes of a deficient application.
- 5) Answer all questions completely. This applies particularly to the law violations question. Approximately 10 percent of all original salesperson applications are deficient because of this problem. More is better - let us decide what is relevant.
- 6) Personal checks are fine. The Department doesn't wait for a personal check to clear before processing the application.
- 7) Provide a telephone number so staff can contact you if questions arise.
- 8) Submit all application requirements at one time. Submitting them piecemeal creates problems.
- 9) Don't submit an application multiple times just to make sure we get it. It is not better to fax it, mail it, hand deliver it, and try to do it over eLicensing!
- 10) Double check the application for completeness before submitting to DRE.

The DRE is also doing its part to improve its efficiency and speed up processing times. Recent improvements include:

- a) Revised and clarified applications and forms to make them easier to understand.
- b) Instructions were made more understandable.
- c) Checklists now accompany each application.
- d) Organized and simplified the website.
- e) Revised Instructions to License Applicants Pamphlet.
- f) Expanded eLicensing. It is easy to use, and it won't let you make a mistake.
- g) Significantly reduced processing times.

Finally, Bigby reminded everyone to use eLicensing for fast, efficient service, and to read the Tips for a Smooth Licensing Transaction, which is posted on the website.

Commissioner Davi commented that he recently used eLicensing to renew his license, and found it to be very simple and quick to use. He recommended it to everyone.

## **OPEN FORUM**

**Q)** - With respect to the number of new licensees, is anything in progress to make the standard of obtaining a license more difficult? Is there any type of control on disciplined licenses who are found to still be conducting business?

**Davi)** - The increase in the licensee population has been dramatic, and one of my goals is to look into the requirements to enter the field and perhaps consider raising the bar.

**Liberator)** - Any change to the requirements would require legislation, and anytime you pursue legislation to increase the licensing requirements, there is the potential that the legislature will look at it as if you're pulling up the drawbridge behind you – making it more difficult on licensees who follow.

**Moran)** - With respect to licensees conducting business on a revoked license, the Department relies on industry to report any such violations to us. Cases will be set up immediately upon receipt, with a goal to resolve them in at least six months. Conducting business on a revoked license is also a criminal offense and we would most likely refer it to the Attorney General as well.

**Q)** - California sets all sorts of disclosure requirements for licensees as well as sellers. In the licensing of real estate agents, is there an opportunity to set the minimum standard for any agent who takes any kind of listing that they provide at least the minimum disclosures required by the State of California? I understand that there are 4-5 other states that require a licensed person who takes any kind of listing that they have to at least provide the minimum disclosures required by the municipality of the state in which they take that listing.

**Alamao)** - Not aware of any requirement now. Would require approval by the Legislature.

**Davi)** - The seller is required to do this regardless when he transfers the property. But I think you're saying you want the requirement to be on the licensee that is taking the listing that they make sure they provide them to the seller so the seller can't be surprised later on with a lawsuit. Some licensees may not like that requirement being put on them – they like it being on the seller. But I understand your concept.

**Q)** - What can we do to help you hire more people?

**Liberator)** - We met with the BTH Agency Secretary last year and pointed out our processing timeframes. The prior administration had cut 26 positions. So, with historically high workload, positions were cut – which just doesn't equate. Secretary Wright McPeak was very helpful in getting us temporary help and authorizing overtime and we were also authorized to pick up 13 additional positions.

**Q)** – Ideally, what would you like the staffing level to be?

**Liberator)** - Staffing was at 412 positions years ago, so at some point back to that level, if warranted. We're very pleased, however, that the new administration was so helpful by providing us with 13 positions.

**Q)** - I serve on the Grievance Committee of a local board. I realize that most licensing laws are controlled by the state legislature. I don't believe there's enough education requirements for re-licensing, and feel the requirements should be stronger. I'm also more than a little disturbed by the ease of re-licensing. The eLicensing system is opening the door for more and more fraud. I would be behind any action to have the legislature re-write some laws to make re-licensing more difficult.

**Davi)** - This body would need to come together and show a united front for more requirements to raise the bar for licensees. You need to be together on the issue, and take it to the Legislature.

**Q)** - If a homeowner association's property management company is working on a revoked with right to a restricted license, what precautions can the Association take and what sort of disclosures requirements are there?

**Moran)** - A property management company collects rents; a homeowners association management company collects HOA dues, which isn't a licensed activity the DRE would have any jurisdiction over. But there are a lot of businesses that do both, so the discipline of a license would have had to have come from the property management side of the business. You should first ask why the license was revoked/restricted. If the reason is serious, the Association needs to make a decision whether to continue to work with them. We have no jurisdiction over HOA management companies, so there are no disclosure requirements in that regard.

**Q)** - Approximately thirty-eight percent of all agents are members of CAR. Do you measure what enforcement actions are against Realtors as compared to non-Realtors? The total licensee population has increased substantially, but membership in CAR has not. Efforts by the Association are ongoing but more work needs to be done. How can DRE help local boards recruit the new licensees into organized real estate?

**Moran)** - As far as recruitment, the DRE maintains a list of new licensees which is available for purchase, and could be used to send recruitment letters to the new licensee explaining the benefits of joining CAR.

**Davi)** - The number of new licensees is disproportionate to the number of new CAR members. CAR needs to get to these individuals if you hope to maintain the professionalism of the business.

**Q)** - The statistics show total licensees have increased by 11% over the past year. Have complaints received increased proportionately to the number of new licensees? Or has it gone beyond that? The Legislature always wants to protect the public, and if we can show that more violations are occurring with these new licensees, it might be an argument to present to the legislature when making the case for stricter licensing requirements.

**Moran)** - One of the functions of the Enforcement staff is to perform background checks on all new licensees who have disclosed, or who we discovered have not disclosed, prior disciplinary or criminal activity. Written complaints have increased, but are not necessarily related to new licensees. Enforcement's workload increase is mainly because of new applicant background checks.

**Q)** - Regarding eLicensing. Are changes to licenses reflected once the change is made or is there a delay?

**Bigby)** - It is real time. As soon as an application for a new licensee, a renewal or change, is entered into the system, it is viewable on the website.

## **CLOSING REMARKS – COMMISSIONER**

Commissioner Davi thanked the Executive Staff of the Department of Real Estate. He expressed special thanks to John Liberator, who has served as Acting Commissioner for the last twelve months. Next meeting is January 28, 2005 in Monterey.

Lisa Stratton, Recorder